

REMARKS

This is a full and timely response to the outstanding final Office Action mailed November 27, 2006. Through this response, claim 4 has been amended and claim 5 has been canceled without prejudice, waiver, or disclaimer. Reconsideration and allowance of the application and pending claims 4 and 6-7 are respectfully requested.

I. Claim Rejections - 35 U.S.C. § 112, Second Paragraph

Claims 4-7 have been rejected under 35 U.S.C. § 112, second paragraph, as being allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention.

Particularly, the Office Action (page 2) alleges:

In claim 4, although applicant is claiming a first support member receivable in the second support or a first support inserted in the into [sic] the second support member, it is noted that the second support member is not being claimed having [sic] a channel or bore or aperture or opening or hollow. Therefore, applicant needs to clarify the language of the claim by adding a channel or bore or aperture or opening or hollow to the second support member.

Applicant has amended claim 4 adding the feature of a channel.

II. Claim Rejections - 35 U.S.C. § 102(b)

A. Statement of the Rejection

Claims 4-7 have been rejected under 35 U.S.C. § 102(b) as being anticipated by *Incavo et al.* ("Incavo," U.S. Pat. No. 5,827,286). Applicant respectfully traverses this rejection. Applicant has canceled claim 5, and has amended claim 4, thus rendering the rejection to these claims moot. Further, Applicant respectfully submits that claims 4, and 6-7 are allowable over *Incavo*.

B. Discussion of the Rejection

It is axiomatic that "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983). Therefore, every claimed feature of the claimed invention must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(b).

Independent claim 4

Claim 4 recites:

4. An anterior cervical corpectomy plate, comprising:
 - a first plate member having a first mount and a first support member extending from said first mount;
 - a second plate member having a second mount and a second support member extending from said second mount;
 - a plurality of apertures disposed in said first mount and said second mount;
 - a stop;
wherein said first support member has a plurality of apertures positioned along a length thereof, and said stop is operative to be inserted into a selected one of the apertures;
 - wherein said first support member and said second support member are adapted to engage each other in an axially adjustable manner, with said first support member being sized and shaped such that at least a portion thereof is receivable within a channel in said second support member, and said stop is adapted to limit such axial adjustment by being mounted to said first support member and extending outwardly therefrom such that, as said first support member is inserted into said channel in said second support member and axially adjusted to draw said first mount and said second mount toward each other, further axial adjustment of said first mount and said second mount toward each other is prevented upon the stop contacting an end of said second support member;
 - wherein the stop permits axial adjustment of said first mount and said second mount away from each other.

Applicant respectfully submits that the rejection of claim 4 has been rendered moot, and that *Incavo* fails to disclose, teach, or suggest at least the above emphasized claim features.

The Office Action (page 3) alleges that *Incavo* discloses:

...a plurality of apertures disposed in the first mound and second mound as stop (16,25) disposed on the first plate member, as best seen in FIGS. 1-5...

Applicant respectfully disagrees. It appears that *Incavo* merely discloses a ratchet means.

Indeed, *Incavo* (Col. 5, ln. 3-11) discloses:

In one embodiment, the ratchet means 16 will be a pawl and groove/tooth 25 type of device that will allow advancement of the second plate member 6 in a first direction but will preclude direction in the opposite movement so that the second plate member 6 can only be advanced and not retracted. The ratchet member 16 may contain teeth located on the second plate member 6 with the pawl located on the first plate member 4. Other types of ratchet members 16 are possible such as a detent mechanism.

Applicant respectfully submits that *Incavo* simply fails to disclose, teach, or suggest the claimed features of a "first support member [having] a plurality of apertures positioned along a length thereof," and "said stop is operative to be inserted into a selected one of the apertures." Thus, for at least this reason, Applicant respectfully requests that the rejection of independent claim 4 be withdrawn.

Because independent claim 4 is allowable over *Incavo*, dependent claims 6 and 7 are allowable as a matter of law for at least the reason that dependent claims 6 and 7 contain all elements of their respective base claim. See, e.g., *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

III. Claim Rejections - 35 U.S.C. § 102(e)

A. Statement of the Rejection

Claims 4, 6, and 7 have been rejected under 35 U.S.C. § 102(e) as being anticipated by *Nakajima* ("*Nakajima*," U.S. Pat. No. 6,355,036). Applicant respectfully traverses this rejection. Applicant has amended claim 4, thus rendering the rejection to this claims moot. Further, Applicant respectfully submits that claims 4 and 6-7 are allowable over *Nakajima*.

B. Discussion of the Rejection

Independent claim 4

Claim 4 recites:

4. An anterior cervical corpectomy plate, comprising:
a first plate member having a first mount and a first support member extending from said first mount;
a second plate member having a second mount and a second support member extending from said second mount;
a plurality of apertures disposed in said first mount and said second mount;
a stop;

wherein said first support member has a plurality of apertures positioned along a length thereof, and said stop is operative to be inserted into a selected one of the apertures;

wherein said first support member and said second support member are adapted to engage each other in an axially adjustable manner, with said first support member being sized and shaped such that at least a portion thereof is receivable within a channel in said second support member, and said stop is adapted to limit such axial adjustment by being mounted to said first support member and extending outwardly therefrom such that, as said first support member is inserted into said channel in said second support member and axially adjusted to draw said first mount and said second mount toward each other, further axial adjustment of said first mount and said second mount toward each other is prevented upon the stop contacting an end of said second support member;

wherein the stop permits axial adjustment of said first mount and said second mount away from each other.

Applicant respectfully submits that the rejection of claim 4 has been rendered moot.

Applicant respectfully submits that *Nakajima* fails to disclose, teach, or suggest at least the above emphasized claim features. The Office Action (page 4) alleges that *Nakajima* discloses:

...as [sic] stop (58) disposed on the first plate member, as best seen in FIG. 4 wherein the first support member and the second support member are adapted to engage each other in an axially adjustable manner.

Applicant respectfully disagrees, and submits that *Nakajima* simply fails to disclose, teach, or suggest the claimed features of a "first support member [having] a

plurality of apertures positioned along a length thereof,” and “said stop is operative to be inserted into a selected one of the apertures.” Thus, for at least this reason, Applicant respectfully requests that the rejection of independent claim 4 be withdrawn.

Because independent claim 4 is allowable over *Nakajima*, dependent claims 6 and 7 are allowable as a matter of law.

IV. Drawings Objection

The drawings have been objected to under 37 C.F.R. § 1.83(a) for not showing every feature of the invention specified in the claims. Specifically, the drawings are objected to for not showing an aperture along a length of the first support member.

In response to this objection, a proposed Fig. 4 is submitted to show apertures along the length of the first support member. This feature is supported in the specification and no new matter has been added. Applicant intends to submit formal drawings including this feature pending approval by the Examiner.

Applicant respectfully requests that the objection be withdrawn.

V. Canceled Claims

As identified above, claim 5 has been canceled from the application through this Response without prejudice, waiver, or disclaimer. Applicant reserves the right to present this canceled claim, or variants thereof, in continuing applications to be filed subsequently.

VI. Proposed Drawings

Applicant has submitted proposed drawings for Figs. 3 and 4. Fig. 4 addresses the objection to the drawing as discussed above.

Fig. 3 illustrates an alternative position for a stop disposed on a plate member. This configuration is supported in the specification such as, for example at paragraph 17 which discloses:

[0017] A stop 30 can be included on the plate 10. As illustrated herein, the stop 30 is disposed on the second support member 26. It should be understood that **the stop 30 can be disposed in any suitable location on the plate 10**. The stop 30 limits the length to which the plate 10 can be decreased thereby limiting the amount of settling of an inserted graft 106 (FIG. 2). Upon the plate 10 reaching the minimum desired length, the stop 30 engages the end of the channel 22 thereby preventing further axial movement of the first support member 18 and the second support member 26 with respect to each other. It is desirable that the stop 30 can be disposed at varying locations along the second support member 26 thereby allowing a surgeon to select the appropriate amount of settling for the patient. **The stop 30 can also be stationary. (emphasis added)**

Applicant proposes the following amendment to the specification to describe

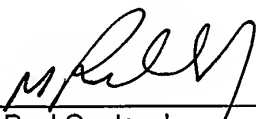
Fig. 4:

[0018] In one configuration, (illustrated in Fig. 4) the stop 30 can comprise a pin and row of apertures along the length of the second support member 26 through which the pin can be disposed. In this embodiment, the pin can be disposed through the desired aperture corresponding to the desired minimum length of the plate 10. The pin-and-aperture configuration for the stop 30 is merely one example of a configuration that would allow for variable minimum length selection of the plate 10. It should be understood that the stop 30 can comprise any suitable configuration without departing from the spirit of the present invention. The plate 10, stop 30 and screws 32 preferably comprise a substantially rigid, surgical safe material such as stainless steel, or the like.

CONCLUSION

Applicant respectfully submits that Applicant's pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, and similarly interpreted statements, should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,



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